RealNetworks Inc v. MLB Advanced Media LP Doc. 10

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

REALNETWORKS, INC., a Washington corporation, Plaintiff, v. MLB ADVANCED MEDIA, L.P., a Delaware limited partnership, Defendant.	Case No. C04-0511FDB ORDER DENYING MOTION FOR TEMPORARY RESTRAINING ORDER

This matter is before the Court on Plaintiff RealNetworks, Inc.'s ("RealNetworks") motion for a temporary restraining order against Defendant MLB Advanced Media, L.P. ("MLBAM"). The Court, having reviewed the motion, memorandum and declarations submitted by RealNetworks, finds for the reasons set forth below, that the motion shall be denied.

I.

RealNetworks develops proprietary software technology for creating, delivering and playing digital media content on the Internet, including its RealMedia format (RealAudio and RealVideo), which enables PC users to listen to and watch digital media on their PCs. MLBAM is Major League Baseball's (MLB) interactive media and Internet company. MLBAM operates MLB's Internet web site (MLB.com) and the team web site for each of the 30 MLB clubs. Among the services and products offered by MLBAM on MLB.com are MLB Gameday Audio (MLB.GDA) (live audio

Dockets.Justia.com

games) and MLB.TV (live video games), paid subscription services that enable PC users to listen to and/or watch live MLB games over the Internet.

RealNetworks alleges that on February 8, 2004, it entered into a written contract with MLBAM (the "MLBAM Contract"). Pursuant to the MLBAM Contract, MLBAM agreed to make the MLB.GDA and MLB.TV games offered on MLB.com during the 2004 and 2005 MLB seasons available to subscribers in RealMedia format. The MLBAM Contract provided that PC users would be given the option of having the games broadcast using RealNetworks format or other formats.[1]

RealNetworks alleges that MLBAM subsequently refused to offer MLB.TV in RealMedia format because MLBAM had entered into a contract with another provider prior to the start of the 2004 MLB season. MLBAM then asked RealNetworks to give up its MLB.TV rights and when RealNetworks refused to do so, MLBAM launched MLB.GDA exclusively in Windows Media format, in breach of the MLBAM Contract. After signing up several thousand subscribers for MLB.GDA, MLBAM advised RealNetworks that thousands more customers would be forever lost to Windows Media format if RealNetworks insisted on not relinquishing its contractual rights to the MLB.TV games. However, if RealNetworks agreed to relinquish those rights, MLBAM promised to launch MLB.GDA in RealMedia format within 24 hours. Ultimately, on March 8, 2004, RealNetworks alleges that MLBAM advised that it never intended to honor its contractual obligation to make MLB.TV available in RealVideo.

II.

"To obtain a preliminary injunction, a party must show either (1) a likelihood of success on the merits and the possibility of irreparable injury, or (2) the existence of serious questions going to the merits and the balance of hardships tipping in its favor." Apple Computer, Inc. v. Formula

[1]Under a prior written contract that ended on February 7, 2004, RealNetworks was the exclusive platform for all of MLB's live audio and video webcasts of all available MLB games during the 2001, 2002 and 2003 seasons.

International, Inc., 725 F.2d 521, 523 (9th Cir. 1984); Los Angeles Memorial Coliseum Commission v. National Football League, 634 F.2d 1197, 1200 (9th Cir. 1980). These two formulations represent two points on a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases. *See* 634 F.2d at 1201.

Under either formulation of the test, a plaintiff must demonstrate that there exists a significant threat of irreparable injury. Oakland Tribune, Inc. v. The Chronicle Publishing Company, Inc., 762 F.2d 1374, 1376 (9th Cir. 1985) (*citing* American Passage Media Corp. v. Cass Communications, Inc, 750 F.2d 1470, 1473 (9th Cir. 1984) (internal citations omitted). Because RealNetworks has not made this minimum showing, the Court need not decide whether it is likely to succeed on the merits.

III.

RealNetworks argues that MLBAM's failure to provide its new and returning subscribers with access to RealMedia format is causing RealNetworks intangible and irreparable harms. The irreparable harms claimed by RealNetworks may generally be summarized as follows: (1) negative impact to other businesses of RealNetworks, including sales of software, consumer subscription products, downloaded music, third party products and services, website advertising, and many other business lines because PC users who previously subscribed to MLB.GDA and MLB.TV in the RealMedia formats will no longer be exposed to RealNetwork's advertisements and offers; (2) return subscribers (from the 2001, 2002 or 2003 seasons) would have been likely to select the RealMedia formats as their defaults for 2004 and 2005, but are now required to use a different format; (3) the possibility that RealNetworks will permanently lose customers; and (4) RealNetworks' competitiveness in the market, goodwill and reputation have been and are being damaged.

To the extent that RealNetworks' claimed injuries are related to lost subscribers, this involves purely monetary harm measurable in damages, which does not constitute irreparable harm. *See*

Sampson v. Murray, 415 U.S. 61, 90, 94 S.Ct. 937, 952, 39 L.Ed.2d 166 (1974); Los Angeles Memorial Coliseum Commission v. National Football League, 634 F.2d 1197, 1202 (9th Cir.1980). The number of subscribers lost is subject to calculation (*i.e.*, RealNetworks alleges there were 250,000 subscribers during the 2003 season). However calculated, claims of injury from loss of subscriptions and revenue are purely economic in nature for which RealNetworks may be adequately compensated in the ordinary course of litigation.

Assuming that the loss of reputation, competitiveness or goodwill may constitute irreparable harm in some cases, RealNetworks has not shown here that such alleged losses have been or will be caused by MLBAM's actions. The impact to RealNetworks' other businesses and the possibility that return PC users will select RealMedia as their format of choice are similarly not adequately supported by the record before the Court and such harm is, therefore, merely speculative. As such, the allegations do not constitute irreparable injury. *See, e.g.*, Goldie's Bookstore, Inc. v. Superior Court of State of California, 739 F.2d 466, 472 (9th Cir. 1984).

IV.

In sum, the possibility of irreparable injury has not been sufficiently demonstrated to warrant the issuance of a temporary restraining order.

ACCORDINGLY,

IT IS ORDERED:

(1) RealNetworks' motion for a temporary restraining order (Dkt.#4) is **DENIED**; and

(2) RealNetworks may file its motion for preliminary injunction no later than March 22, 2004 and note the motion for hearing as any other dispositive motion pursuant to CR 7(d)(3), Local Rules W.D. Wash. If either party desires oral argument, it may so indicate as provided by CR 7(b)(4); however, unless otherwise ordered by the Court, the motion will be decided without oral argument.

DATED this 12th day of March, 2004.

*S/Franklin D. Burgess*_________________
FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE